UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,548	04/23/2001	Doug Rollins	MTIPAT.191A	3928

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EXAMINER
BURLESON, MICHAEL L

ART UNIT	PAPER NUMBER
2625	

NOTIFICATION DATE	DELIVERY MODE
12/17/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Office Action Summary	09/840,548	ROLLINS, DOUG
	Examiner	**Art Unit**	
	Michael Burleson	2625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>09 October 2007</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9,11,13-16 and 21-28* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9,11,13-16 and 21-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments filed 10/09/2007 have been fully considered but they are

not persuasive.

2.   Applicant states that McHale fails to teach of determining whether at least one of

the outgoing dial-up modems is available after the wait time (Applicant's remarks page

8). Examiner disagrees with Applicant. McHale teaches that if a modem from the

modem pool (74) is not available, after a predetermined period of time, the modem is

released for later use (column 7,lines 20-27). This reads on determining whether at

least one of the outgoing dial-up modems is available after the wait time.

3.   Applicant states that Pounds et al. fails to teach of determining whether at least

one of the outgoing dial-up modems is available after the wait time and sending a

message via an available outgoing dial-up modem and the public switched telephone

network. Examiner agrees with Applicant. Hiett teaches of a dial-up modem pool, that

is connected to a network to establish communications (column 5,lines 29-40).

4.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

6.   Claims 1-9,11,13-16 and 21-28 rejected under 35 U.S.C. 103(a) as being

unpatentable over McHale US 5668857 in view of Hiett US 6795408.

7.   Regarding claim 1, McHale teaches a method of communicating a message via a

computer network (column 3,lines 12-18). McHale teaches of transmitting a message

from a first server to a target transceiver via a second server wherein the second server

comprises a plurality of outgoing dial-up modems and wherein the outgoing dial-up

modems are configured to fax the message to recipients via a public switched

telephone network wherein the second server is selected such that the target

transceiver and the second server are located within a same local-toll area of the public

switched telephone (column 3,lines 54-61, column 4,lines 26-36 and column 10,lines

23-25). McHale teaches determining with a processor availability of the outgoing dial-

up modems at the second server (column 10,lines 11-21 and 26-32). McHale teaches if

none of the outgoing dial-up modems are available, applying a wait time wherein the

wait time is based at least in part on the utilization of the outgoing dial-up modems

(column 10,lines 26-32). McHale teaches determining whether at least one of the

outgoing dial-up modems is available after the wait time (column 10, lines 26-32).

8.   McHale fails to teach of sending the message via an available outgoing dial-up

modem and the public switched telephoned network.

9.   Hiett teaches of sending the message via an available outgoing dial-up modem

and the public switched telephoned network (column 3,lines 53-65 and column 5,lines

29-40).

10.   Therefore it would have been obvious to one of ordinary skill in the art at the time

of the applicant's invention to modify McHale wherein McHale's device is applied to a

dial-up modem pool. It would have been obvious to one of ordinary skill in the art at the

time of the applicant's invention to modify McHale by the teaching of Hiett in order to

handle voice and/or facsimile data transmission.

11.   Regarding claim 2, McHale teaches storing the message at the second server

(column 10,lines 6-10).

12.   Regarding claim 3, McHale teaches reserving an available outgoing dial-up

modem for transmitting the message to the recipient (column 10,lines 22-32).

13.   Regarding claim 4, McHale teaches determining availability of the outgoing dial-

up modems comprises identifying an active or an inactive state of the outgoing dial-up

modems (column 110,lines 22-32).

14.   Regarding claim 5, McHale teaches determining availability of the outgoing dial-

up modems is performed periodically at predetermined times or at start-up of the

second server or after one of the outgoing dial-up modems is removed or another of the

outgoing dial-up modems is added (column 11,lines 4-20).

15.   Regarding claim 6, McHale teaches saving the active or inactive state of the

outgoing dial-up modem in a memory (column 8,lines 48-52).

16.   Regarding claim 7, McHale teaches queuing the message for sending at a later

time if there is no outgoing dial-up modem available for immediate sending (column

10,lines 26-37).

17.   Regarding claim 8, McHale teaches the wait time is based upon at least one

characteristic of the load upon the outgoing dial-up modems (column 11,lines 4-21).

18.   Regarding claim 9, McHale teaches sending a transmittal report to a transceiver

having originated the message (column 10,lines 22-25).

19.   Regarding claim 11, McHale teaches receiving the message, wherein receiving

the message includes handling the message according to the T.37 standard (column

3,lines 45-61).

20.   Regarding claim 13, the steps of method claim 1 performs all of the means of

system claim 13. Thus claim 13 is rejected for the same reasons as discussed in the

rejection of claim 1.

21.   Regarding claim 14, the steps of method claim 2 performs all of the means of

system claim 14. Thus claim 14 is rejected for the same reasons as discussed in the

rejection of claim 2.

22.   Regarding claim 15, the steps of method claim 3 performs all of the means of

system claim 15. Thus claim 15 is rejected for the same reasons as discussed in the

rejection of claim 3.

23.   Regarding claim 16, the steps of method claim 7 performs all of the means of

system claim 16. Thus claim 16 is rejected for the same reasons as discussed in the

rejection of claim 7.

24.   Regarding claim 21, McHale teaches a method of communicating a fax message

via a computer network (column 3,lines 12-18). McHale teaches of transmitting a

message from a first transceiver to a first server via a public switched telephone

network (column 4,lines 32-36). McHale teaches forwarding the message by the first

server, via a computer network to a second server wherein the second server

comprises a plurality of outgoing dial-up modems and wherein the outgoing dial-up

modems are configured to fax the message to recipients via a public switched

telephone network (column 3,lines 54-61, column 4,lines 26-36 and column 10,lines 23-

25). McHale teaches receiving and storing the message at the second server (column

10,lines 6-10). McHale teaches determining availability of the outgoing dial-up modems

at the second server (column 10,lines 11-21 and 26-32). McHale teaches if none of the

outgoing dial-up modems are available, applying a wait time wherein the wait time is

based at least in part on a number of the dial-up modems and based at least in part on

a number of subscribers associated with the second server (column 10,lines 26-32 and

lines 37-45). McHale teaches determining availability of each of the outgoing dial-up

modems after the wait time (column 10, lines 26-32). McHale teaches if one of the

outgoing dial-up modems is available after the wait time, sending the message via an

available one of the outgoing dial-up modems and the public switched telephone

network to a second transceiver, wherein the second transceiver is physically located in

the same local-toll area of a public telephone network as the second server (column

10,lines 28-37).

25.   Regarding claim 22, McHale teaches receiving and storing includes processing

the message according to a store-and-forward protocol (column 10,lines 3-21).

26.   Regarding claim 23, McHale teaches reserving the available outgoing dial-up

modem for sending the message (column 10,lines 22-32).

27.   Regarding claim 24, McHale teaches queuing the transmission of the message,

wherein queuing transmission of the message includes the wait time that is based upon

at least one characteristic of the load upon the outgoing dial-up modems (column

10,lines 26-37 and column 11,lines 4-21).

28.   Regarding claim 25, McHale teaches a computer readable medium storing

computer readable instructions that when executed by a computer perform a method of

communicating a message via a computer network (column 3,lines 12-18, lines 32-35

and lines 54-61). McHale teaches of computer readable instructions configured to

forward a message from a first server to a second server wherein the second server

comprises a plurality of outgoing dial-up modems and wherein the outgoing dial-up

modems are configured to fax the message to recipients via a public switched

telephone network (column 3,lines 54-61, column 4,lines 26-36 and column 10,lines 23-

25). McHale teaches instructions configured to determine availability of the outgoing

dial-up modems at the second server (column 10,lines 11-21 and 26-32). McHale

teaches if none of the outgoing dial-up modems are available, computer readable

instructions configured to apply a wait time wherein the wait time is based at least in

part on the utilization of the outgoing dial-up modems (column 10,lines 26-32). McHale

teaches computer readable instructions configured to determine whether at least one of

the outgoing dial-up modems is available after the wait time (column 10, lines 26-32).

29.   McHale fails to teach of computer readable instructions configured to fax the

message via an available outgoing dial-up modem and the public switched telephoned

network.

30.   Hiett teaches of sending the message via an available outgoing dial-up modem

and the public switched telephoned network (column 3,lines 53-65 and column 5,lines

29-40).

31.   Therefore it would have been obvious to one of ordinary skill in the art at the time

of the applicant's invention to modify McHale wherein McHale's device is applied to a

dial-up modem pool. It would have been obvious to one of ordinary skill in the art at the

time of the applicant's invention to modify McHale by the teaching of Hiett in order to

handle voice and/or facsimile data transmission.

32.   Regarding claim 26, McHale teaches instructions configured to receive and store

the message, wherein receiving and storing the message includes processing the

message according to a store-and-forward protocol (column 10,lines 3-21).

33.   Regarding claim 27, McHale teaches computer readable instructions configured

to reserve an available outgoing dial-up modem for transmitting the message to the

recipient (column 10,lines 22-32).

34.   Regarding claim 28, McHale teaches computer readable instructions configured

to queue the message, wherein queuing the message comprises waiting for a

predetermined period of time that is based upon at least one characteristic of the load

upon the outgoing dial-up modems (column 10,lines 26-37 and column 11,lines 4-21).

Conclusion

1.   Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Michael Burleson whose telephone number is 571-272-
7460. The examiner can normally be reached Monday through Friday from 8:30 A.M. to
5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Twyler Haskins can be reached on 571-272-7406.

Information regarding the status of an application may be obtained from the
Patent Application Information Retrieval (PAIR) system. Status information for
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Business Center (EBC) at 866-217-9197 (toll-free).

Michael Burleson

Patent Examiner

December 10, 2007

TWYLER LAMB HASKINS
SUPERVISORY PATENT EXAMINER